



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
FREEDOM OF INFORMATION ACT BRANCH
Washington, D.C. 20570

Via email

April 29, 2022

Re: FOIA Request NLRB-2022-000459

Dear Dan Bauman (Chronicle of Higher Education):

This is in response to your request, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, received on January 24, 2022, in which you seek the following:

1. Copies of files recording all NLRB case management data that is currently available on the NLRB.gov domain. This request refers to, but is not limited to:
 - a. Election tally information, which would include, but not be limited to, the following fields: case number, tally issued date, tally type, ballot type, status, no of eligible voters, void ballots, unit location, region assigned, unit id, votes against, total ballots counted, votes for respective labor union(s), a description of the voting unit(s), any additional party or parties not previously described
 - b. Case status which would include, but not be limited to, the following fields: case number, date filed, status, location, region assigned, reason closed
 - c. Case docket activity, including links to available docket items
 - d. Availability of related documents, as well as any links to those related documents
 - e. Allegations data
 - f. Participant information, which would include, but not be limited to, the following fields: employer, employer address, employer phone, petitioner, petitioner address, petitioner phone, charged party / respondent, charged

party / respondent address, charged party / respondent phone, charging party address, charging party phone, any additional party or parties not previously described

g. Related cases data

2. I am also requesting any lookup tables, field layouts code sheets or other documents needed to interpret the data, if applicable.

You assumed fees for the processing of your request in the amount of \$100.00, but requested a fee waiver.

We acknowledged your request on January 24, 2022. On February 1, 2022, and again on February 11, 2022, a member of my staff contacted you by email to inform you that numerous items of your request, specifically items 1a, 1b, 1e, and 1f, were available through various pages on the Agency's website (which are listed in detailed below). An inquiry was also made of you to determine if there was a specific timeframe that you were interested in. On March 1, 2022, you replied by email that you were having issues with downloading from the Agency's website, and in regard to the timeframe, "accepting whatever is in the NextGen application is fine." We regret the delay in our final response.

In response to your requests in items 1c, 1d, and 1g, staff in the Office of the Chief Information Officer (OCIO) conducted several searches of the Agency's electronic casehandling system, NxGen, which generally maintains data in NLRB case records from 2011 to present. (The same data is also provided on the Agency's website, www.nlr.gov for users to download.) These searches yielded four Excel files. For the time period of October 1, 2011 to April 8, 2022, two of these Excel files provide a list of docket activity for filed or Agency issued documents, along with links to documents that are available on the website. The third Excel file lists related case information from the website, and the fourth Excel file lists related case documents, along with links to any documents that are available on the website.

Additionally, we have confirmed that the downloading capabilities have been restored for the following web pages:

- Case Search (<https://www.nlr.gov/search/case>),
- Recent Filings (<https://www.nlr.gov/reports/graphs-data/recent-filings>),
- Election Results (<https://www.nlr.gov/reports/graphs-data/recent-election-results>), and
- Advanced Data Search (<https://www.nlr.gov/advanced-search>).

Information for your request items 1a, 1b, 1e, and 1f can be downloaded from these pages.

Finally, regarding request Item 2, please note that the Freedom of Information Act, 5 U.S.C. § 552, generally provides that any person has a right, enforceable in court, of access to federal agency records, except to the extent that such records, or portions thereof, are protected from disclosure by one of the nine exemptions or three special law enforcement record exclusions. The FOIA applies only to “records” maintained by federal agencies, and does not require an agency to create documents or to answer questions. *See, e.g., Poll v. U.S. Office of Special Counsel*, 208 F.3d 226 (Table), 2000 WL 14422, at *4 n.2 (10th Cir. Oct. 14, 1999) (recognizing that the FOIA does not require an agency “to create documents or opinions in response to an individual’s request for information”) (quoting *Hudgins v. IRS*, 620 F. Supp. 19, 21 (D.D.C. 1985)). Accordingly, the Agency currently does not maintain any lookup tables, field layout code sheets, or other documents to explain the data other than what is available in the unfair labor practice and representation casehandling manuals, which are available here: <https://www.nlr.gov/guidance/key-reference-materials/manuals-and-guides>.

For the purpose of assessing fees, we have placed you in Category C, as a representative of the news media, in that you qualify as a person “actively gathering news for an entity that is organized and operated to publish or broadcast news to the public.” NLRB Rules and Regulations, 29 C.F.R. § 102.117(d)(1)(vii). Accordingly, there is no charge assessed for this request. Given your placement as a news media requester, your request for a fee waiver is moot.

You may contact Jodilyn Breirather, the FOIA Specialist who processed your request, at (202) 368-1927 or by email at Jodilyn.Breirather@nlrb.gov, as well as the Agency’s FOIA Public Liaison, for any further assistance and/or to discuss any aspect of your request. The FOIA Public Liaison, in addition to the FOIA Specialist, can further explain responsive and releasable agency records, suggest agency offices that may have responsive records, and/or discuss how to narrow the scope of a request in order to minimize fees and processing times. The contact information for the FOIA Public Liaison is:

Kristine M. Minami
FOIA Public Liaison
National Labor Relations Board
1015 Half Street, S.E., 4th Floor
Washington, D.C. 20570
Email: FOIAPublicLiaison@nlrb.gov
Telephone: (202) 273-0902
Fax: (202) 273-FOIA (3642)

After first contacting the Agency, you may additionally contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA dispute resolution services it offers. The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, Maryland 20740-6001
Email: ogis@nara.gov
Telephone: (202) 741-5770
Toll free: (877) 684-6448
Fax: (202) 741-5769

You may obtain a review of this determination under the NLRB Rules and Regulations, 29 C.F.R. § 102.117(c)(2)(v), by filing an administrative appeal with the Division of Legal Counsel (DLC) through FOIAonline at: <https://foiaonline.gov/foiaonline/action/public/home> or by mail or email at:

Nancy E. Kessler Platt
Chief FOIA Officer
National Labor Relations Board
1015 Half Street, S.E., 4th Floor
Washington, D.C. 20570
Email: DLCFOIAAppeal@nrlrb.gov

Any appeal must be postmarked or electronically submitted within 90 days of the date of this letter. Any appeal should contain a complete statement of the reasons upon which it is based.

Please be advised that contacting any Agency official (including the FOIA Specialist, FOIA Officer, or the FOIA Public Liaison) and/or OGIS does not stop the 90-day appeal clock and is not an alternative or substitute for filing an administrative appeal.

Sincerely,

/s/ Synta E. Keeling

Synta E. Keeling
FOIA Officer

Attachment: (four Excel files)